

TITLE 4: BUSINESS AND SPECIAL LICENSES, REGULATIONS

DIVISION 1: BUSINESS LICENSES AND REGULATIONS

Chapter 19: MASSAGE CLINICS.

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41.191 Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations, shall have the meanings set forth herein. Words used in the present tense includes the future tense, plural words include the singular, and singular words include the plural. Words not specifically defined shall be given their common and ordinary meanings. The word "shall" as used herein is mandatory and not merely directory.

- (a) "Board of Supervisors" shall refer to the Board of Supervisors of San Bernardino County.
- (b) "Clerk of the Board" shall refer to the Clerk of the Board of Supervisors of San Bernardino County.
- (c) "County" shall mean the County of San Bernardino.
- (d) "EHS" shall refer to the Department of Environmental Health Services of the County of San Bernardino.
- (e) "Massage" means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar items commonly used in this practice.
- (f) "Massage Clinic" means and includes any massage clinic, parlor or any room, place or institution where massage is given or administered by a massage technician.
- (g) "Massage Technician" means and includes any person who gives, performs or administers to another person a massage as defined in this section.
- (h) "Notice Address" shall be the address designated by the licensee for the mailing of all notices, legal mail, and other written communications from the County to the licensee.
- (i) "Person" means and includes person(s), firms, corporations, partnerships, associations or other forms of business organization or group.
- (j) "Sheriff" shall refer to the Sheriff of the County of San Bernardino and/or his or her deputies.
- (k) "Recognized School" means any school or institution of learning which teaches the theory, ethics, practice, profession, and work of massage, which school or institution has been approved pursuant to California Education Code section 94300 et seq., and applicable regulations. A school offering a correspondence course not requiring actual attendance shall not be deemed a recognized school.
- (l) "Specified Anatomical Areas" shall include any of the following human anatomical areas: genitals, pubic regions, anuses or female breasts below a point immediately above the top of the areolae.
- (m) "Specified Sexual Activities" shall include all the following:
 - (1) The fondling or other erotic touching of specified anatomical areas;
 - (2) Sex acts, normal or perverted, including intercourse, oral copulation, or sodomy;
 - (3) Masturbation; or

(4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

(n) "Customer" shall include all clients, customers, patrons, guests, and any other person who receives a massage, within an establishment licensed as a massage clinic under this chapter of the San Bernardino County Code.

Adopted Ordinance #3484 (1992); Amended Ordinance #3518 (1992); Amended #3556 (1993);

41.192 License Requirements.

It shall be unlawful for any person to practice, engage in or carry on the business or activities of a massage clinic within the unincorporated area of the County without having a license under this chapter to do so, and complying with all regulations and requirements as hereinafter contained and set forth. It shall be unlawful for any owner, operator, responsible managing employee, manager or permittee in charge of or in control of a massage clinic to employ or permit a person to act as a massage technician, as defined in this chapter, within the unincorporated area of the County, who is not in possession of a valid, unrevoked massage technician license issued by the County. A license to perform services as a massage technician does not authorize the operation of a massage clinic. Nor does possession of a license issued under this chapter entitle the holder to personally perform activities requiring a massage technician's license, unless such person additionally holds a massage technician license.

Adopted Ordinance #3484 (1992);

41.193 License Exemptions.

This chapter shall not apply to the following classes of individuals, and no massage clinic license shall be required of such persons, while engaged in the performance of the duties of their respective professions:

(a) Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the State of California, and persons working at the place of business and under the supervision of a licensed physician, surgeon, chiropractor, osteopath, or physical therapist.

(b) Nurses who are registered as such under the laws of the State of California.

(c) Barbers, beauticians and cosmetologists who are duly licensed under the laws of the State of California.

(d) Athletic trainers.

(e) Acupuncturists who are duly certified to practice their profession in the State or California.

Adopted Ordinance #3484 (1992); Amended Ordinance #3556 (1993);

41.194 Application Form and Content.

(a) Required Information. Any person desiring to obtain a license to operate a massage clinic or renew an existing massage clinic license shall make written application to the Clerk of the Board on a written form to be provided by the Clerk, who shall promptly refer all complete applications to the Sheriff and EHS for investigation. Said application shall include, but not necessarily be limited to the following items:

(1) Name. The applicant's full name and any aliases heretofore used or currently used and current business address and mailing address and the names and residence addresses of all officers, directors, and each stockholder holding more than ten percent (10%) of the stock, if a corporation, or partners, if a partnership.

(2) Addresses. All previous businesses, and where applicable, the residential addresses of the applicant or applicant's principal officers, directors, and stockholders holding more than ten percent (10%) of stock, if a corporation, or partners, if a partnership, for the five (5) years immediately preceding submission of the application.

(3) Physical Description. Height, weight, color of eyes and hair of applicant or each of the applicant's officers, directors, and each stockholder holding more than ten percent (10%) of stock, if a corporation, or partners, if a partnership, together with at least two (2) current color photographs at least two inches by two inches (2"x2") in size for each individual.

(4) Proof of Age. A certified birth certificate, immigration papers, passport, or current California Driver's License evidencing the fact the applicant is no less than eighteen (18) years of age.

(5) Business Information. The business, occupation, or employment of the applicant or the applicant's officers, directors, and each stockholder holding more than ten percent (10%) of the stock, or partners, if a partnership, for the three (3) years immediately preceding the date of the application. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its Articles of Incorporation and a copy of the Articles of Incorporation attached to the application.

(6) Location for Licensed Activities. Each location where the licensed activities will be conducted and the names and addresses of all massage technicians employed at those locations.

(7) Prior Licenses. A statement of any business license history relating to massage or any procedure described in Section 41. 191(e) of the applicant and of applicant's partners, if a partnership, or each of the officers, directors, or persons who hold more than ten percent (10%) of the stock, if a corporation, including a statement of

whether such person, in previous operations, has had such license revoked or suspended, the reason therefore, and a statement setting forth all massage business history or occupation subsequent to such suspension or revocation.

(8) Criminal Convictions. A statement of whether the applicant, and any partners, if a partnership, or officers, directors, or persons holding more than ten percent (10%) of the stock, if a corporation, have been convicted of an offense involving conduct which requires registration under the California Penal Code section 290, or conduct which is in violation of the provisions of California Penal Code sections 266i, 315, 316, 318 or 647(b), or any felony involving the sale of a controlled substance specified in Sections 11054 through 11058 of the California Health and Safety Code, or has been convicted in another state of an offense, which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in this section, or was convicted of one or more other offenses as may be described under Government Code section 51032.

(9) Notice Address. The address to which all notices and communications from the County to the applicant or licensee shall be directed. It shall be the responsibility of the applicant or licensee to immediately inform the Clerk of the Board, in writing, of any changes of the applicant or licensee's notice address.

(b) License Fee. Each application for massage clinic license shall be accompanied by nonrefundable investigative fee as specified in Chapter 2 of Division 6 of Title I relating to fees.

(c) Incomplete Applications. The Clerk of the Board shall promptly reject any incomplete application which does not meet all requirements of this section, and upon request of the applicant, shall notify the applicant in writing, by first-class mail, postage prepaid, to the address supplied to the Clerk of the Board by the applicant, of the deficiencies in the application.

(d) Filing for Renewal. No application for renewal of the license shall be accepted earlier than ninety (90) days prior to expiration of the license.

Adopted Ordinance #3484 (1992);

41.195 Investigation by Sheriff.

(a) Review of Application. The Sheriff shall conduct an investigation of the matters set forth in the application. The Sheriff shall review the information submitted to the Clerk of the Board and shall review any other documents or materials which are requested by the Sheriff in the course of investigation and which reasonably relate to the licensing requirements of this chapter. The Sheriff shall require the applicant to be fingerprinted and to pay whatever fingerprinting fee is then in effect.

(b) Report on Investigation Results. The Sheriff shall promptly report to the Clerk of the Board whether the application and the other documents and materials submitted by the applicant meet all requirements of this chapter and all other applicable laws.

Adopted Ordinance #3484 (1992);

41.196 Investigation by Environmental Health Services, Building and Safety, Planning, and Fire Departments.

(a) Following receipt of the Sheriff's report required under Section 41.195, if the Sheriff determines that the application and other documents and materials submitted by the applicant do not meet all requirements of this Chapter and all other applicable laws, the Clerk of the Board shall issue a Notice of Denial to applicant pursuant to the provisions of Section 41.1910(g).

(b) Following receipt of the Sheriff's report required under Section 41.195, if the Sheriff determines that the application and other documents and materials submitted by the applicant do meet all requirements of this Chapter and all other applicable laws, the Clerk of the Board shall submit the massage clinic application for review by the Department of Environmental Health Services, the Department of Building and Safety, the County Planning Department, and the fire department having jurisdiction over the premises on which the licensed activities are to be conducted, to determine whether the premises comply with applicable laws, including appropriate Development Code requirements and the County General Plan. The departments referenced above shall promptly conduct their investigation and shall thereafter promptly render their reports to the Clerk of the Board.

(c) Following receipt of the departmental reports required under subsection (b) of this Section 41.196, the Clerk of the Board shall either:

(1) Issue the massage clinic license to the applicant if each report from each department specified in subparagraph (a) of this Section 41.196 finds that the premises on which the licensed activities are to be conducted comply with applicable laws, including appropriate Development Code requirements and the County General Plan; or

(2) Issue a Notice of Denial to applicant pursuant to the provisions of Section 41.1910(g) if each report from each department specified in subparagraph (a) of this Section 41.196 does not find that the premises on which the licensed activities are to be conducted comply with applicable laws, including appropriate Development Code requirements and the County General Plan.

Adopted Ordinance #3484 (1992); Amended Ordinance #3518 (1992); Amended Ordinance #3758 (1994);

41.197 Facilities and Operations.

(a) Operating Requirements. No license to operate a massage clinic shall be issued nor may any massage clinic operate unless the massage clinic premises and operation comply with each of the following minimum requirements:

(1) Signage. A readable sign shall be posted at the main entrance identifying the establishment as a massage clinic, provided, however, that all such signs shall otherwise comply with the sign requirements of the County Code.

(2) Lighting. Minimum lighting shall be provided in accordance with the Uniform Building Code. In addition, at least one (1) unobstructed artificial light, white in color, of not less than sixty (60) watts shall be provided and used at all times in each enclosed room or booth while massage services are being rendered.

(3) Ventilation. Minimum ventilation shall be provided in accordance with the Uniform Building Code.

(4) Disinfection of Instruments. Instruments used for massage shall be disinfected prior to each use by a reasonable method approved by the Department of Environmental Health Services. Where such instruments for massage are employed, adequate quantities of supplies for disinfection shall be available during all hours of operation.

(5) Water. Hot and cold running water shall be provided.

(6) Linen Storage. Closed cabinets shall be utilized for the storage of clean towels and linen. After use, towels and linen shall be removed from the room or booth and stored in a clean container until laundered.

(7) Dressing and Toilet Facilities. Dressing and toilet facilities shall be provided for patrons.

(8) Sanitary Conditions. All walls, ceilings, floors, steam and vapor rooms, and all other physical facilities for the massage clinic shall be kept in good repair, maintained in a clean and sanitary condition.

(9) Clean Linen. Clean and sanitary towels and linens shall be provided for patrons receiving massage services. No common use of towels or linens shall be permitted.

(10) Technician's Dress Code. Licensees under this chapter shall insure that all persons employed to work on the massage clinic premises, and including all massage technicians conducting licensed activities on the massage clinic premises, shall be dressed in clothing made of an opaque material, and at a minimum, shall not expose the technician's undergarments or bare midriff, or any specified anatomical areas, and shall comply with the following requirements, as applicable:

(A) Upper garments. All garments covering the upper torso (e.g., shirts or dresses) shall have sleeves not less than two inches (2") in length, measuring from the top of the shoulder, and necklines no lower than two inches (2") below the clavicle.

(B) Skirts. Hems of dresses, skirts, smocks, or other similar garments shall not be more than two inches (2") above the top of the knee.

(C) Shorts. Cuffs or hems of shorts, culottes, pants or other similar garments shall not be more than six inches (6") above the top of the knee.

(11) Compliance with Laws. The premises to be used shall at all times comply with applicable laws.

(b) EHS Licensing Investigation. Upon receipt of a license application from the Clerk of the Board pursuant to Section 41.196, EHS shall promptly conduct an investigation to determine compliance with the requirements of this section and shall promptly issue a health permit upon receipt of notice of approval of a massage clinic license. Said permit shall be posted in a conspicuous place on the premises.

Adopted Ordinance #3484 (1992);

41.198 Massage Clinic Examination.

All applicants for new massage clinic licenses and renewals of expired licenses must pass a written examination before a massage clinic license will be issued. Such written examination shall comply with the following requirements:

(a) Notification of Examination Date. If the Sheriff reports to the Clerk of the Board that a massage clinic application and accompanying documents meet the requirements of this chapter and all other applicable laws, the Clerk of the Board shall notify the applicant of the next regularly scheduled massage clinic examination date, and the time and place such examination is to be held. The Clerk of the Board shall additionally schedule the applicant to take the massage clinic examination on the next regularly scheduled examination date.

(b) Contents of Examinations. The massage clinic examination shall test the applicant's knowledge of Chapters 19 (Section 41.191, et seq.) and 20 (Sections 41.201, et seq.) of Division 1 of Title 4 of the San Bernardino County Code. Each applicant shall be considered to have passed the massage clinic examination by answering seventy percent (70%) of the examination questions correctly.

(c) Scheduling of Examinations. The Clerk of the Board shall schedule massage clinic examinations to be held no less frequently than once every February, May, August, and November. Results of massage clinic examinations shall be made available to applicants within fourteen (14) days following the date upon which the examination is completed.

(d) The requirement for passing a written examination does not apply if an application for renewal is made prior to the license's expiration date.

Repealed Ordinance #3518 (1992); Adopted Ordinance #3556 (1993)

41.199 License Fee,

Every person practicing, engaging in or carrying on the activities or business of a massage clinic shall procure a license or temporary license and pay a license fee as specified in Chapter 2 of Division 6 of Title I relating to fees in addition to all other fees required under this chapter.

Adopted Ordinance #3484 (1992);

41.1910 Grounds for Denial of License.

A massage clinic license shall be denied upon the determination of any one of the following:

(a) Criminal Convictions. The applicant, owners, operators, partners if a partnership, or officers, directors, or persons holding more than ten percent (10%) of the stock, if a corporation, or any of them, has within ten (10) years immediately preceding the date of the application been convicted of any of the offenses set forth in Section 41.194(a)(8), or have, within the same time frame been convicted of any offense in another state which, if committed or attempted in this State, would have been punishable as one or more offenses enumerated under this section, or is required to register under Section 290 of the Penal Code.

(b) Revocation of Prior Licenses. The applicant, owners, operators, partners if a partnership, or officers, directors, or persons holding more than ten percent (10%) of the stock, if a corporation, or any of them, has had a massage clinic license or massage technician license revoked or suspended for cause within the five (5) year period immediately preceding the date of the application.

(c) Misstated Facts. The applicant has knowingly misstated facts or falsified information on the application.

(d) Failure to Comply with Application Requirements. The applicant has failed to comply with the requirements of Sections 41.194 and 41.197.

(e) Prior Unlicensed Business. The applicant has conducted a business requiring a massage clinic or massage technician license in the unincorporated portion of the County without such a license having been issued by the County within the five (5) years immediately preceding the application.

(f) Prohibited Conduct. An applicant has been found to have engaged in prohibited conduct in violation of Subsection 41.1917(a) and/or 41.2014(a).

(g) Notice of Denial. Upon determination of grounds to deny a license, the Clerk of the Board shall cause a "Notice of Denial" to be mailed by first class mail, postage prepaid, to the notice address designated by the applicant pursuant to Section 41.194(a)(9).

Adopted Ordinance #3484 (1992); Amended Ordinance #3556 (1993); Amended Ordinance #3579 (1994);

41.1911 License Denial.

Any person denied a license pursuant to this chapter may not operate a massage clinic and must cease all operations being conducted under any temporary operating permit issued under this chapter. An applicant whose license has been denied may appeal the denial to the Board of Supervisors as set forth in Section 41.1922 of this chapter.

Adopted Ordinance #3484 (1992);

41.1912 Licenses Non-Transferable.

All licenses issued under this chapter are non-transferable both as to location, and as to the person holding the license.

41.1913 Display of License.

Any person to whom a massage clinic license is granted shall display said license prominently in a conspicuous place, capable of being viewed by customers, at every location where the licensed activities are performed or conducted.

Adopted Ordinance #3484 (1992); Amended Ordinance #3556 (1993);

41.1914 Notice of Massage Technicians Employed by Licensee.

(a) No Unlicensed Massage Technicians. Licensees under this chapter shall not permit anyone not holding a valid massage technician's license issued by the County to perform massage in a massage clinic licensed by the County.

(b) Notices to the County. Each licensee under this chapter shall notify the Clerk of the Board, in writing, within five (5) days of the hiring and/or commencement of services, whichever is first, of the name, license number, date of hiring, and location of each massage clinic where employed, of each massage technician whose services are utilized by the licensee. Licensee shall also notify the Clerk of the Board, in writing, within five (5) days of the

termination of employment or services of the name, license number, termination date, and location of each massage clinic where employed, of each massage technician whose services and/or employment has terminated.

Adopted Ordinance #3484 (1992);

41.1915 Duration and Renewal of License.

(a) Term. Each license issued under this chapter shall terminate at the expiration of one (1) year from the date of its issuance unless revoked prior to said termination pursuant to Section 41.1920.

(b) Renewal. Any renewal of a license issued under this chapter shall be pursuant to the same requirements, procedures, provisions and regulations set forth in Sections 41.194, 41.195, 41.196 and 41.197 of this chapter.

(c) Renewal During Pendency of License Revocation Proceedings. In the event a renewal application is filed during the pendency of a proceeding to revoke the license, the license shall continue in full force and effect until entry of the final order of the Board terminating revocation proceedings. The application for renewal shall become a part of the pending proceeding, and be subject to all evidence which has been or may thereafter be presented. Failure of the Board to revoke the license shall have the effect of granting renewal of the license. No further notice to the applicant is required, and the Board, or Hearing Officer is authorized to consider and make findings upon such application in accordance with this chapter.

Adopted Ordinance #3484 (1992); Amended Ordinance #3603 (1995);

41.1916 Hours of Operation and Other Restrictions.

No massage clinic shall be open or conduct business between the hours of 10:00 p.m. and 7:00 a.m. Massage clinics shall not sell food or beverages or serve food or beverages to any patrons on the premises of the massage clinic.

Adopted Ordinance #3484 (1992);

41.1917 Prohibited Conduct.

(a) Prohibited Conduct. No massage technician and/or any other employees working in a massage clinic, or the clinic's customers, patrons, or guests shall engage in any specified sexual activities upon the premises of the massage clinic. No massage technician and/or other employee of a massage clinic may expose specified anatomical areas in the presence of any patron, customer, or guest. In the course of administering a massage, no massage technician and/or other massage clinic employee may make intentional physical contact with the specified anatomical areas of any customer, patron, or guests. Notwithstanding Section 11.021 of this Code, violation of this section shall not constitute a misdemeanor or an infraction, but such violation shall be grounds for revocation of a massage clinic license.

(b) Draping. No massage clinic shall allow massage technicians and/or any other employee working therein to administer any form of massage or come into any form of physical contact with a customer who is either fully or partially undressed, without first draping the customer's specified anatomical areas, if such areas would otherwise be exposed, in accordance with the accepted standards of the American Massage Therapy Association and/or Associated Professional Massage Therapists and Allied Health Practitioners.

Adopted Ordinance #3484 (1992); Amended Ordinance #3518 (1992); Amended #3556 (1993);

41.1918 Inspection and Enforcement.

Officers of the Sheriff's Department, EHS, the Building and Safety Department, and the fire department having jurisdiction over the premises shall have the right to enter any massage clinic during regular business hours as specified in Section 41.1916 above, to make reasonable inspection to ascertain whether the provisions of this chapter are being met, provided reasonable and normal business operations shall not be interfered with.

Adopted Ordinance #3484 (1992);

41.1919 Abatement.

Any massage clinic operated, conducted or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be unlawful and a public nuisance, and the District Attorney or County Counsel may, in addition to, or in lieu of any other legal or criminal proceedings, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law; and shall take such other steps, and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage clinic and restrain and enjoin any person from operating, conducting or maintaining a massage clinic contrary to the provisions of this chapter.

Adopted Ordinance #3484 (1992);

41.1920 Revocation of License.

(a) Grounds for Revocation. A license issued under this chapter shall be revoked on one or more of the following grounds:

(1) Fraud or Deceit. That the licensee practiced fraud or deceit in obtaining a license under this chapter.

(2) Violation of Chapter. That the licensee or the licensee's employee violated a provision or provisions of this chapter.

(3) Criminal Conviction. That the licensee of the license has been convicted in a court of competent jurisdiction of any offenses described in Section 41.194(a)(8).

(4) Improperly Maintained Facilities. That the facilities and operations of the massage clinic are not kept in compliance with this chapter as set forth in Section 41.197, and that the holder has failed to promptly remedy any deficiency of which the holder has been notified. For purposes of this subsection, notice shall mean notice given personally or by leaving notice at the licensed premises, or by first class mail, postage prepaid, to the notice address designated by the licensee pursuant to Section 41.194(a)(9).

(5) Employment of Unlicensed Technicians. That the holder has employed, allowed or permitted an unlicensed person to perform massage in the holder's massage clinic.

(6) Error. That the license was issued in error.

(7) Civil Penalties. Assessment of three (3) or more civil penalties as provided by Section 41.1921 during any six (6) month period.

(8) Prohibited conduct. A licensee has been found to have engaged in prohibited conduct in violation of Section 41.1917(a).

(b) Notice of Revocation. Upon determination of grounds to revoke a license, the Clerk of the Board shall cause a "Notice of Revocation" to be mailed by first class, postage prepaid mail, to the notice address designated by the licensee pursuant to Section 41.194(a)(9).

(c) Waiting Period. A six (6) month waiting period shall be required following the effective date of a license revocation before a new license shall be issued for a massage clinic to operate at the same location as the clinic which had its license revoked.

Adopted Ordinance #3484 (1992); Amended Ordinance #3579 (1994);

41.1921 Civil Penalties.

For each violation of the provisions of this chapter, excepting violation of Section 41.1917 pertaining to prohibited conduct, a monetary civil penalty of Five Hundred Dollars (\$500) per *violation* may be assessed in lieu of license revocation.

Adopted Ordinance #3484 (1992);

41.1922 Appeal Rights.

Any person denied a license under this chapter or a licensee whose license has been revoked, and the owner of real property subject to the waiting period required under Section 41.1920(c) may appeal the Clerk of the Board's determination to the Board of Supervisors. Any such appeals must be in writing and must be filed with the Clerk of the Board not more than fifteen (15) days following the Clerk of the Board's deposit into the mails of the Notice of Denial or Revocation pursuant to Sections 41.1910(g) or 41.1920(b). The Board of Supervisors may hear appeals directly or in its sole discretion, may appoint a hearing officer to hear any appeal and make a recommendation to the Board of Supervisors pursuant to Section 12.270, et seq., of the County Code. All decisions of the Board of Supervisors shall be final as to any appeal presented to them.

Adopted Ordinance #3484 (1992); Amended Ordinance #3579 (1994);

41.1923 Validity.

If any section or subsection, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this chapter.

Adopted Ordinance #3484 (1992);